

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00300/2017

DATED THIS THE 14th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

R.Srinivasa Murthy
Aged about 49 years
Contingent Worker (Casual Labour)
Aircustoms
Airport, Bangalore.

....Applicant

(By Advocate Sri R.Hari)

Vs.

1. The Commissioner of Central Excise
Commissionerate I
Central Revenue Building
Queens Road
Bangalore – 560 001.

2. The Chief Commissioner of Central Excise
Central Revenue Building
Queens Road
Bangalore – 560 001.

3. The Chief Commissioner of Customs
Central Revenue Building
Queens Road
Bangalore – 560 001.

....Respondents

(By Advocates Sri V.N.Holla, Sr.CGSC)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as a casual labourer in the Central Excise and Custom Department on 18.12.2000 and continuously working in

various offices in Bangalore till date and put in more than 16 years of service as casual contingent worker. But his service was not confirmed/regularised and he is entitled for confirmation of temporary status of casual labour on similar terms as has been done in the case of other casual labourers who were working in the office of the Commissioner of the Central Excise, New Delhi. As per the respondent Estt. order dtd.25.4.2017(Annexure-A1), the respondents issued conferment of temporary status to the casual labourers wherein his name was not considered. The Office of the Commissioner of Central Excise & Customs by order dtd.21.4.2015 has also granted temporary status to the casual labourers w.e.f. 27.1.2012 under the Casual Labours (Grant of temporary status and regularisation) Scheme. He submits that he had passed 2nd year PUC and eligible for LDC posts and belongs to SC. In OAs.145/2008 & 128/2008, the Tribunal has allowed the relief to the casual labourers who have been granted temporary status. Being similarly situated person he is also entitled for similar treatment. He submitted several applications to the respondents but they have not considered him even for Sepoy post. Aggrieved by the same, he filed the present OA seeking the following relief:

i. The respondent may be directed to grant the applicant a temporary status on par with the other similarly working casual labours at the respondents under the casual labours (Grant of temporary status and regularisation) scheme of Govt. of India 1993.

ii. Respondent may be directed to give a continuity of service, backwages, pension scheme and all other consequential benefits which he is legally entitled to meet the ends of the justice.

2. The respondents, on the other hand, in their reply statement have submitted that the applicant was initially engaged as casual worker in CESTAT, Bangalore on 18.12.2000 but he was not even engaged as casual worker on the date of issue of Ministry of OM dtd.10.9.1993 as per which it is imperative that casual labourers

should be engaged prior to the date of issue of the said OM and should have rendered continuous service of atleast one year as on the said date. However, since the applicant was engaged after the date of issue of the said OM, he has not fulfilled the eligibility criteria and hence not entitled for conferment of temporary status. The contention of the applicant that he has completed more than 16 years of service is not true inasmuch as he was engaged by the department only for the period from December 2000 to 2005 after which the housekeeping services were outsourced to contractors. His contention that his representations for sepoy post has not been considered is not correct as he has to first be given temporary status which then should be regularised. After which only his request can be considered provided he fulfills all other criteria laid down for appointment to the post of Sepoy as per the recruitment rules. The individuals mentioned in Estt. Order dtd.25.4.2017 have approached the Tribunal and were conferred with the temporary status as per the orders of the Tribunal. The Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of GOI, 1993 was formulated vide OM dtd.10.9.1993 which stipulates that the temporary status would be conferred on all casual labourers who are in employment on the date of issue of OM and who have rendered a continuous service of atleast one year, which means that they must have been engaged for a period of atleast 240 days. The Board vide letter dtd.10.1.1997 had clarified that temporary status may be accorded only to those who have completed 1 year as on the date of issue of OM i.e., 10.9.1993 and vide letter dtd.9.8.2002, the Board has clarified that the scheme was not an ongoing scheme. All the other instructions which were issued subsequent to the issue of OM dtd.10.9.1993 reiterate the conditions of the OM dtd.10.9.1993. Since the applicant was engaged after the date of issue of said OM, he has not fulfilled the eligibility criteria and

hence not entitled for conferment of temporary status. And there is no violation of any of the provisions of the Constitution and the norms laid down by the DOPT OM dtd.10.9.1993 which is binding on the department. Umadevi's case speaks of regularisation of services wherein irregular appointment has been made against the regular sanctioned posts. In the present case, the applicant has not been appointed against any permanent post. On the contention of the applicant that he also is entitled for similar treatment as the casual workers who have been granted temporary status vide OA.No.128/2008 & 145/2008 of CAT, Bangalore Bench dtd.27.1.2012, it is submitted that instructions have been issued by the Board vide letter dtd.15.7.2014 that in cases where the Court Orders are adverse to the interest of the Department/Government, such orders should not be implemented without clearance from the Board. However, the Office vide letter dtd.25.1.2016 made a reference to the Board recommending for grant of temporary status to all the 79 CLTS including the applicant but the same is awaited.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that when DGI, CCE filed CWP No.5453/99 before the Hon'ble High Court of Delhi, the High Court of Delhi observed that 'the scheme formulated in the year 1993 is an ongoing scheme'. As the applicant has served in Central Excise & Customs Department for more than 16 years of service as a casual labourer, he is legally entitled for similar treatment on the foregoing orders as has been granted temporary status vide OAs.No.129/2008 & 145/2008 of this Tribunal.

4. We have heard the Learned Counsel for both the parties and perused the materials and written arguments notes filed by both the parties in detail. The applicant was engaged as a casual worker w.e.f. 18.12.2000 on a temporary basis

and his wages were paid as per the rates fixed by the Min. of Labour & Employment from time to time upto December 2005. From 01.01.2006, due to the outsourcing of housekeeping services, he continues with the contractor. The wages are paid based on the number of days worked by him. From his own representations at Annexure-A3 to A5 etc., it is clear that he had been working as contingent staff in the respondent organisation engaged in locating files, assisting and maintenance of files, xeroxing of citations etc. It is apparent that there is no specific post for which he has been appointed and that he has been engaged only with effect from December 2000 to December 2005 earning about Rs.1900/- per month in the initial stages. As noted by the respondents, the applicant has not worked for more than 10 years and was not engaged against any such duly sanctioned post to gain the benefit of the Hon'ble Apex Court judgment in *Umadevi's* case. Further as noted in the judgment of the Hon'ble Apex Court in *UOI vs. Arulmozhi Iniarasu & Ors.*, the applicant would gain strength if his appointment had been made originally by following a due process of selection as envisaged by the relevant rules with equal opportunities for participation by others eligible by competitive selection. In the present case, the applicant was not engaged after following any due process of selection except presumably calling for a list from the employment exchange which also is not apparent from the facts recorded in the case as no such order has been cited by the applicant himself. Further in the case of *Narender Kumar Tiwari vs. State of Jharkhand in Civil Appeal No.7424-2429/2018 dtd.1.8.2018*, the Hon'ble Apex Court has held as follows:

“The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing

persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the C.A. Nos.7423-7429 of 2018 (@ S.L.P. (C) Nos. 19832-19838 of 2017) Page 4 of 7 constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

5. The applicant would claim parity with certain other persons who have been conferred with temporary status under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme citing a communication dtd.25.4.2017 wherein certain persons have been granted with temporary status by the respondents. At this juncture, it is advantageous to refer to the judgment of the Hon'ble Apex Court in the case of *Controller of Defence Accounts, Dehradun Vs. Dhaniram* reported in 2007 (10) SCC 462 wherein the Hon'ble Apex Court held as follows:

“12. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. High Court seems to have taken the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. Clearly clause 4 of the Scheme does not envisage it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group "D" posts”. And regularisation of service ordered by the High Court was set aside.

6. As has been noted by the Hon'ble Apex Court in the case of *Upender Singh Vs. State of Bihar in Civil Appeal No.2356/2018* decided on 23.2.2018, the Hon'ble Apex Court has noted that the Apex Court (in *Umadevi's* case) has left a small window opened for those who were working on adhoc/daily wage basis for more than ten years to regularise them as a one-time measure. However, this was subject to the condition that they should have been appointed in duly sanctioned posts and also provided that they were not continuing to work under the cover of orders of the courts or the tribunals. Time and again the Hon'ble Apex Court has reiterated that irregular appointments can be regularised if the appointment was made by the authority competent to do so, it was made in a vacant sanctioned post, in accordance with Article 14 of the Constitution of India with equal opportunity for participation of others eligible by competitive selection and finally if the candidate possessed the eligibility qualifications for a regular appointment to the post. Similarly, the Hon'ble Apex Court has consistently refused to lend credence to any illegal appointments void ab initio and made contrary to the Article 14 without open competitive selection by a prescribed procedure. The applicant would claim that there were several cases viz., OA.128/2008 order dtd.27.1.2012, OA 145/2008 order dtd.27.1.2012, OA.No.907-912/2015 order dtd.24.3.2016 etc., to buttress his case. However, as noted already, the applicant was taken on a casual temporary basis in the year 2000 and this engagement was not supported by any regular process of selection or issue of appointment order and that he was working as a contingent staff attending to miscellaneous items of works and there was no specific sanctioned post against which he was taken as a contingent staff. Further as ordered by this Tribunal in OA.No.506/2017 vide dtd.6.9.2018, the applicant had obviously not completed the period of 10 years before 2006. In that OA, this

Tribunal has ordered that the applicant being a contingent worker and later on an employee under contractor may not be in a position to claim any parity with the earlier set of employees whose employment has been confirmed by this Tribunal and the OA was therefore dismissed.

7. Following all the above, it is apparent that the applicant would not be eligible to be considered for the relief he has prayed for. Therefore, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00300/2017

Annexure-A1: Est. Order 68/2017 dtd.25.4.2017

Annexure-A2: Appointment Letter

Annexure-A3 to A6: Representation letters

Annexure-A7: Estt.order No.II/39/39/2015 dt.25.01.2016

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

-NIL-
